IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 223 OF 1989.

Suresh Bhavanishankar Pejawar since deceased through heirs:

1a) Sucheta Suresh Pejawar, Indian inhabitant, residing at Nadkari's Bungalow, V.A. Tawade Road, Dahisar (E), Mumbai-400068.
1b) Smt. Sushma Shaym Amladi, Indian inhabitant, residing at 5, Shanti Kunj, B.J. Deorukhkar Road, Naigaon, Mumbai - 400014.
1c) Smt. Sunita Sudhir Netanadi, Indian inhabitant, residing at 1st floor, Amarnath Apartment, Narayan Mhatre Road, Dahisar (West) Mumbai - 400 068. .. Petitioners (Ori.Pltff.)

Versus

M/s. Hitex Embroidery Pvt. Ltd., a company registered under the Companies Act, having its registered Office at 4, Hitex Industrial Estate, and carrying on business at Dahisar (East), S.V. Road, Bombay - 400068. .. Respondent (Ori.Defdt.)

Mr. Chetan Agarwal i/b V.P. Tulpule for the petitioner.

Mr. Rajesh Patil i/b A.K. Abhyankar for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 11TH AUGUST, 2005

ORAL JUDGMENT. :

1. Petitioner-plaintiff has invoked Article 227 of the Constitution of India and sought to challenge the proceedings of the Courts below as the case, as contemplated under the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 (for short "The Bombay Rent Act") was dismissed by the Appellate Court i.e. The Small Causes Court at Bombay. Therefore, the present Writ Petition.

2. Heard Mr. Chetan Agarwal, counsel for the petitioners and Mr. Rajesh Patil, counsel for the respondent. The main submission raised in the present Writ Petition is based on the Additional Affidavit filed on record which is dated 16th July, 2005, the averments wherein are as follows:

> "7. I say that our mother shifted to Anandadham (Senior Citizen Home), Jambulpada, Tq. Sudhagad, Dist. Raigad on 6th December 1977 all though the own premises was there i.e. suit flat. I say that our mother was residing in the said Old Age Home till 25/06/2005. I further say that on 25th June 2005 we brought her to Mumbai for medical treatment, as she was suffering from Vertigo problem and other old age ailments and unable to bear the pains. I say that all though the

petitioner 1(a) is against residing with the married daughters, she is compelled to stay with me for some time and with my sister from 25/06/2005 and the said circumstances are further deteriorating her health mentally and physically. I say that it is something which the petitioner 1(a) has to do against her principles. Hereto annexed and marked as EXHIBIT "A" is the copy of the certificate issued by the Lokmanya a Seva Sangh, Vile Parle (East), Mumbai about the residential proof of the petitioner no.1(a) at Old Age Home. Hereto annexed and marked as EXHIBIT "B" is the copy of the medical certificate issued by Dr. Vira's Jain Clinic dated 15/07/2005.

8. I say that since our mother i.e. petitioner no.1(a) has no other alternate accommodation and even do not want to stay with the married daughters, she is compelled to stay at old age home at the age of 68 years though the suit premises is available to her but the same is unnecessarily kept in possession by the respondents just to harass us. I further say that as per my knowledge the respondent has not paid rent from 1988 and even the society's outstanding increased to more than 1 lakh rupees, which was not paid by the respondent and we can not pay that as we are not in a position to pay the same. Hereto annexed and marked as EXHIBIT-C is the copy of the statement showing outstanding of the society furnished by the society.

11. I say that on handing over the vacant and peaceful possession of the suit flat to the petitioners, petitioner No.1(a) is only going to reside their and no other person except the petitioner No.1(a) is in dire need of the suit premises. I further say that we both daughters i.e. petitioner no 1(c) who resides in Dahisar and myself can take care of our mother efficiently."

3. Further, there is a Certificate placed on the record to demonstrate that Mrs. Sucheta Suresh Pejawar is staying at Anandadham (senior citizen home), Jambulpada, Tal. Sudhagad, District Raigad, from 16th December, 1997. The Certificate is dated 25th June, 2005. The material to support ill health and the medical treatment which is going on is also part of the record. The respondent, by an Affidavit-in-Reply dated 9th August, 2005, resisted the same and insisted for strict proof of the averments made in the Affidavit. It means that there is no acceptance of the case as sought to be raised by the petitioners-landlord. It further means that there is a disputed question of facts which are raised by this Reply, apart from merit. This, according to me, goes to the root of the matter, specially when it is a case of relevant and material subsequent events which are required to be considered while deciding the issue of default by the tenant and the bonafide need of the landlord.

4. The learned counsel for the petitioners strongly insisted, based on the judgment of the Apex Court, and contended that in the interest of justice and to avoid further delay, it is necessary that under Article 227 of the Constitution of India, this Court should consider the merit of the Affidavit dated 16th

July, 2005 and decide the matter as the urgent requirement of an aged lady cannot be overlooked. The scope and power of Article 227 is very vast, but at the same time, it has it's own restrictions and limitations, specially when it comes to the material subsequent disputed facts and circumstances in a litigation arising out of the landlord and the tenant relationship.

5. The averments made, as referred above, in the present case itself shows that the landlady herself in a way waived the earlier grounds and now for the first time in the Writ Petition, has raised the new grounds of default and her bonafide need, because of her illness and the circumstances, as referred above. There is no doubt that such request of senior citizen, specially the lady who is living, for whatever may be the reason, in Anandadham i.e. home for senior citizens needs to be considered as early as possible.

6. But an another facet which also cannot be overlooked in this matter is that she has been living in the said senior citizen home since 1997. The Petition is pending since 1989. The present Certificate is dated 25th June, 2005, has been placed on the record at the stage of final hearing. The Apex Court has already observed in AIR 1987 that the landlord, if takes no

action within reasonable time and/or failed to take action as early as possible, in such circumstances, it is the landlord to suffer and not the tenant. Still, the facts which are referred above and reflected on the the record need no further discussion that a senior citizen requires the premises for her own occupation as she is living in the senior citizen home.

7. The landlady for the first time in the Writ Petition, is claiming the possession of the premises for her own occupation, it means that altogether a new plea and it also means a new material to support the same, specially when the other side is not accepting the said case at all. If it is a question of reassessment and evaluation of the evidence, then there is no choice, but to remand the matter to the Court for considering the rival contentions, based on the material, if any, placed on the record by the parties. The learned counsel for the parties have relied on the following cases in support of their rival contentions.

. In **M/s. Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina** AIR 1985, S.C., 207, the Apex Court has observed:

"It is well settled now that in a

> proceeding for the ejectment of a tenant on the ground of personal requirement under a statute controlling the eviction of tenants, unless the statute prescribes to the contrary, the requirement must continue to exist on the date when the proceeding is finally disposed of either in appeal or revision by the relevant authority. That position is indisputable.

. In **Lekh Raj** (supra), the Apex Court has observed as follows:

> "11. The law on the subject is also settled. In case subsequent event or fact having bearing on the issues or relief in a suit or proceeding, which any party seeks to bring on record, the court should not shut its door. All laws and procedures including functioning of courts are all in aid to confer justice on all who knock its door. Courts should interpret the law not in derogation of justice but in its aid. Thus bringing on record subsequent event, which is relevant, should be permitted to be brought on record to render justice to a party. But the court in doing so should be cautious not to permit it in a routine. It should refuse where a party is doing so to delay the proceedings, harass the other party or doing so for any other ulterior motive. The courts even before admitting should examine, whether the alleged subsequent event has any material bearing on issues involved and which would materially affect the result."
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> 12. This Court in *Ramesh Kumar v. Kesho Ram* held: (SCC pp.626-27, para 6)
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> . The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception.

> Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not preclude from taking a "cautious cognizance" of the subsequent changes of fact and law to mould the relief."

. The Apex Court in **Omprakash Gupta Vs. Ranbir B. Goyal** (2002) 2, S.C.C., 256, followed in **J.J. Lal Pvt. Ltd. & Ors. Vs. M.R. Murali & Anr.** (2002) 3 S.C.C., 98 and by the Bombay High Court in **R.E. Fanibunda Vs. Nicholas of India Ltd. & others** 2004 (Supl.) Bom.C.R., 255, observed as under:

> "11. The ordinary rule of civil law is that the rights of the parties stand crystallized on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied; (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.
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> 12. Such subsequent event may be one purely of law or founded on facts. In the former case, the court may take judicial

> notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 CPC. Such subsequent event, the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties."

. Recently, the Apex Court in **Pratap Rai Tanwani & Anr. Vs. Uttam Chand & Anr.** (2004) 8, S.C.C., 490, has reinterpreted the principle of "subsequent event" in the landlord and tenant dispute in reference to the bonafide, genuine need of the landlord, and observed as under:

> "25. Recently, in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to

himself - whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self-occupation than what has been already stated in the three precedents.

16. The above position has remained unaffected in Atma S. Berar Vs. Mukhtiar Singh.

17. In the background of the factual position one thing which clearly emerges is that the High Court had considered the subsequent events which the appellants highlighted and tend to hold that the bona fide need continues to subsist. As observed in *Hasmat Rai* case, the appellate court is required to examine, evaluate and adjudicate the subsequent events and their effect. This has been done in the instant case. That factual finding does not suffer from any infirmity. What the appellants have highlighted as subsequent events fall within the realm of possibility or probability of non-return and not a certainty, which is necessary to be established to show that the needs has been eclipsed."

. The Apex again, after taking note of various decisions of the Apex Court, in **Kedar Nath Agrawal (Dead) and Anr. Vs. Dhanraji Devi (dead) By LRs & Anr.** (2004), 8, S.C.C., 76, observed thus:

"16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our

> judgment, the law is well settled on the point, and it is this: the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceedings and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the institution of suit/proceeding, cannot be considered at all. it is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events *inter alia* in the following circumstances:
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> (i) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or
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> (ii) it is necessary to take notice of subsequent events in order to shorten litigation; or
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> (iii) it is necessary to do so in order to do complete justice between the parties."

8. The above crystallized background of law makes it very clear that in the facts and circumstances of the case, a case is made out to consider the bonafide need of the landlady. In view of the above Apex Court decisions and to give opportunity to both the parties, I am inclined to remand the matter back to the Appellate Court as there is no serious or complicated question of facts as such are involved in this litigation of landlord and tenant. The Appellate Court shall, after due notice to both the parties and opportunity to both the parties, decide the case, based on the Affidavit filed on the record, within a period of four months from

the date of receipt of this order. The Appellate Court may take resort to the provisions of Order LXI, Rule 28 and/or Order XVIII, Rule 19 and Order XXVI Rule 4A and such other newly amended provisions of Civil Procedure Code to shorten the time of litigation and for an early result.

9. The learned counsel for the petitioners has also invoked Order XXIX Rule 9 for the local commissioner to avoid further delay in the matter. He relied on **Lekh Raj Vs. Munilal & Ors.** (2001) 2 S.C.C., 760. That was a case of construction of premises. In the present case, the Court has to consider the bonafide need of a person subject to rival contention, as well as, opportunity to both the parties. The Appellate Court, however, may consider even this aspect if case is made out. Even if the case of bonafide need is taken note of the further aspect of comparative hardship will also be relevant which the Court must consider after the evidence of the parties. In view of this, there is no point in appointing a Commissioner in the present Writ Petition in the High Court. Here, once the Appellate Court comes to a particular conclusion based on the record, appropriate order can be passed then and there only. In view of this, the following order:

O R D E R :

(a). The impugned judgment and order of the Appellate Court dated 28/29th November, 1988, is quashed and set aside.

(b). The matter is remanded back to the Appellate Court to be decided within four months, after due notice and opportunity to both the parties, as observed above.

(c) The parties are directed to appear before the Appellate Court on 19th September, 2005.

(d) The record and proceedings shall be sent by the Registry to the Small Causes Court at Bombay, Appellate Court, forthwith.

13. Rule made absolute on the above terms. However, there shall be no order as to costs. Writ Petition is accordingly disposed of.

[ANOOP V. MOHTA, J.]

[srpasha@hc]